

STATE OF MICHIGAN
COURT OF APPEALS

J & C FAMILY FOODS, INC., d/b/a BUSCH'S
VALU LAND, and GARY F. MADVIN,

UNPUBLISHED
June 9, 2000

Plaintiffs,

v

No. 210856
Washtenaw Circuit Court
LC No. 94-002640-CH

EFRON INVESTORS, II and FRED GORDON,

Defendants/Cross-
Defendants/Appellants,

and

GARY YUNKER, BRETT HUTCHENS,
HUTCHENS COMPANY, and COMERICA BANK
- ILLINOIS,

Defendants,

and

SAMIR-MARY, INC.,

Defendant/Cross-Plaintiff/Appellee.

Before: Saad, P.J., and Jansen and Talbot, JJ.

PER CURIAM.

Appellants Efron Investors, II and Fred Gordon appeal as of right from the circuit court's order confirming an arbitrator's award in favor of appellee Samir-Mary, Inc. We affirm.

This is an arbitration matter in which the arbitrator, in a decision dated October 24, 1996, ruled that Efron Investors failed to pay to Samir-Mary a lump sum of \$100,000 pursuant to a mortgage note

when it was due on November 25, 1993, and that such failure constituted a default under the terms of the mortgage note; that Samir-Mary did request acceleration of the balance of the mortgage note; that Fred Gordon, as the guarantor of the note, owed Samir-Mary \$357,201.92; that interest accrued at a rate of \$107.65 a day until paid; and that Samir-Mary was entitled to \$20,000 in attorney fees. The arbitrator later denied appellants motion for rehearing, reconsideration, or amendment of the decision, on January 21, 1997. On February 11, 1997, the circuit court entered a judgment confirming the arbitrator's decision.

Appellants have appealed as of right and have raised four issues attacking the merits of the arbitrator's decision. However, we hold that because the parties submitted their claims to arbitration, they may not now seek judicial review of the merits of the arbitrator's decision. Judicial review is strictly limited by statute and court rule, as will be more fully set forth, and appellants have simply failed to show that the arbitrator's decision can properly be vacated, modified, or corrected.

In the present case, the parties agreed to arbitrate their claims. Further, the order regarding arbitration specifically states that the circuit court would "retain jurisdiction to enforce this agreement and to enter a judgment after the arbitrator's decision." Where an arbitration agreement provides that judgment may be entered on the arbitration award, it falls within the definition of statutory arbitration and is therefore governed by MCL 600.5001 *et seq.*; MSA 27A.5001 *et seq.* *Brucker v McKinlay Transport, Inc.*, 454 Mich 8, 14-15; 557 NW2d 536 (1997); *Gordon Sel-Way, Inc v Spence Bros, Inc.*, 438 Mich 488, 495; 475 NW2d 704 (1991); *DAIIE v Gavin*, 416 Mich 407, 417; 331 NW2d 418 (1982); *Hetrick v David A Friedman, DPM, PC*, 237 Mich App 264, 268-269; 602 NW2d 603 (1999); *Dohanyos v Detrex Corp (After Remand)*, 217 Mich App 171, 174; 550 NW2d 608 (1996).

An arbitration agreement that calls for entry of a circuit court judgment must conform to the statute and court rule. *Brucker, supra*, p 17. MCL 600.5021; MSA 27A.5021 provides that arbitration is to be conducted in accordance with the rules of the Michigan Supreme Court. MCR 3.602 is the applicable court rule and provides for very limited judicial review of an arbitration award. Under MCR 3.602(J), a court may vacate an arbitration award if (1) the award was procured by corruption, fraud, or other undue means; (2) there was evident partiality by an arbitrator, corruption of an arbitrator, or misconduct prejudicing a party's rights; (3) the arbitrator exceeded his or her powers; (4) or the arbitrator refused to postpone the hearing on a showing of sufficient cause, refused to hear evidence material to the controversy, or otherwise conducted the hearing to prejudice substantially a party's rights. Under MCR 3.602(K), a court may modify or correct an arbitration award if (1) there is an evident miscalculation of figures or an evident mistake in the description of a person, a thing, or property referred to in the award; (2) the arbitrator awarded on a matter not submitted and the award may be corrected without affecting the merits of the decision of the issues submitted; or (3) the award is imperfect in a matter of form, not affecting the merits of the controversy.

In the present case, the circuit court simply confirmed the arbitration award in conformance with MCR 3.602(I) and (L). Although the arbitration order purports to include a process for judicial review of the arbitrator's decision, the parties, having agreed to statutory arbitration, cannot provide for judicial review of the arbitrator's decision that is inconsistent with the court rule. The arbitration agreement

provides that the “decision of the arbitrator will be appealable following entry of judgment thereon as if it were findings of fact by a court or a jury verdict. However, this is an invalid provision in the arbitration agreement, as explained in *Brucker, supra*, p 17:

In locating an alternative means of dispute resolution, the parties are generally free to craft whatever method they choose. All sorts of private conciliation, mediation, and arbitration devices are available. What the parties are *not* able to do, however, is reach a private agreement that dictates a role for *public* institutions.

See also, *Dick v Dick*, 210 Mich App 576, 588-589; 534 NW2d 185 (1995) (this Court struck the clause in the parties’ arbitration agreement that denied any appeal of the procedural methods adopted by the arbitrator, but permitted appeal of the substantive issues to this Court, noting that the parties were required to proceed according to the applicable statute and court rule since they invoked binding arbitration).

Therefore, paragraph 3 of the order of arbitration stating that, “The decision of the arbitrator will be appealable following entry of judgment thereon as if it were findings of fact by a court or a jury verdict,” is stricken from the arbitration agreement because the parties cannot expand the court’s review of the arbitration award. *Brucker, supra*; *Dick, supra*. Appellants have not argued that the arbitration award can or should be vacated for any of the factors set forth in MCR 3.602(J), nor have appellants argued that the arbitration award can or should be modified or corrected for any of the factors set forth in MCR 3.602(K).

Interpretation of the mortgage note and guaranty was for the arbitrator, and courts may not engage in contract interpretation. *Brucker, supra*, p 15; *Konal v Forlini*, 235 Mich App 69, 74; 596 NW2d 630 (1999). Further, claims that the arbitrator erred in fact findings are beyond the scope of appellate review. *Id.*, p 75. Rather, the proper role of the court is to examine whether the arbitrator rendered an award which comports with the terms of the contract. *Gordon Sel-Way, supra*, p 496. Here, it is clear that the arbitrator did not act beyond the material terms of the contract from which his authority was derived because the arbitrator’s decision is strictly limited to finding the principal, interest, attorney fees, and costs that Samir-Mary was entitled to recover from appellants because of appellants’ breach in failing to pay the lump sum of \$100,000 when it was due on November 25, 1993. The arbitration agreement clearly sets forth in paragraph two that the arbitrator would decide the amount of principal, interest, attorney fees, and costs owed to Samir-Mary by appellants.

Accordingly, we need not, and cannot, address the issues raised by appellants because those issues attack the arbitrator’s interpretation of the mortgage note and the guaranty, that being an exclusive matter for the arbitrator. Because this case involves statutory arbitration,

judicial review is strictly limited by MCR 3.602 and appellants raise no issue attacking the arbitrator's decision in that limited manner. The circuit court's order confirming the arbitration award is consequently affirmed.

Affirmed.

/s/ Kathleen Jansen

/s/ Michael J. Talbot